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IN THE

Supreme Court of the United States

October Term, 1967.

No. 1208.

SAFEGUARD MUTUAL INSURANCE COMPANY, an Insurance Corporation of the State of Pennsylvania,

Appellant,

v.

HOUSING AUTHORITY OF THE CITY OF CAMDEN, a Body Corporate and Politic of the State of New Jersey and B. SMITH ELECTRIC COMPANY, INC., a Corporation,

Appellees.

On Appeal from the Judgment of the Superior Court of New Jersey, Appellate Division.

MOTION TO DISMISS APPEAL.

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Huntzinger Printing Corp., *Appellate Printers*, Camden, N. J.

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v.

HOUSING AUTHORITY OF THE CITY OF CAMDEN, a Body Corporate and Politic of the State of New Jersey and B. SMITH ELECTRIC COMPANY, INC., a Corporation,

Appellees.

ON APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION.

MOTION TO DISMISS APPEAL.

Appellee, Housing Authority of the City of Camden, moves the Court to dismiss the appeal herein filed, on the following grounds:

I. No substantial Federal question is presented by the appeal that has not previously been decided by this Court.

The question which appellant presents was passed upon by this Court in *International Shoe Co. vs. Washington*, 326 U. S. 310; 90 L. Ed. 95; 66 S. Ct. 154; 161 A. L. R. 1057 and in *McGee vs. International Life Insurance Co.*, 355 U. S. 220; 2 L. Ed. 2d 223; 78 S. Ct. 199.

See also *Parmalee vs. Iowa State Traveling Mens Assn.* (C. A. 5 Fla.), 206 Fed. 2d 518; 44 A. L. R. 2d 410, certification denied 346 U. S. 877; 98 L. Ed. 384; 74 S. Ct. 125.

In the present case appellant, a Pennsylvania Insurance Company, not authorized to do business in New Jersey, issued a surety bond insuring the bid of its principal, B. Smith Electric Co. if the principal was successful in obtaining the award of a contract for electrical work on a public Housing Project to be constructed by the appellee, Housing Authority in the City of Camden. The bid bond was delivered to the Housing Authority in Camden by the principal, who was subsequently awarded the contract, whereupon the bid bond was formally accepted by the Housing Authority as insurance that the principal would enter into the contract so awarded and supply the necessary performance and payment bond required under the contract and by the bidding specifications.

The principal defaulted. It could not supply the required performance and payment bond. It delivered another bond to the Housing Authority from appellant which purported to be a performance and payment bond, but which was rejected because it did not satisfy the requirements of the specifications. Housing Authority, after giving the principal an opportunity to obtain a proper performance and payment bond, was obliged to readvertise and award the bid to another contractor at a higher price, which was in excess of the amount of the bond which is the subject of this litigation. Housing Authority thereupon sued appellant and served the New Jersey Commissioner of Banking and Insurance under the New Jersey Constructive Service Act, N. J. S. A. 17:51-1, subsection (a).

Appellant established the necessary minimum contacts with the State of New Jersey by issuing a surety bond which it knew had no efficacy outside of New Jersey, since the Bond insured the bid of a contractor on a public Housing Project to be built in New Jersey. Appellant gave the bid bond to its principal knowing that the insured was the Housing Authority of the City of Camden. Appellant knew and intended that the bid bond should be delivered to the Housing Authority in Camden, New Jersey, since the very reason for the existence of the bid bond was that it should be submitted with the principal's bid. The place of contracting was New Jersey since the bid bond became a binding contract only upon its acceptance by the Housing Authority and the award of the contract to appellant's principal. All of this occurred in New Jersey since all acts to be done by appellant's principal were to be performed in New Jersey.

The so-called "long arm" statute of Florida, Florida Unauthorized Insurers Process Act, Florida Statutes, Sections 625.28, et seq., F. S. A., construed in *Parmalee vs. Iowa State Traveling Mens Assn.*, supra, was practically identical

with the New Jersey Statute, N. J. S. A. 17:51-1 (Appendix I, Appellant's Jurisdictional Statement, p. 32 et seq.).

Hanson vs. Denckla, 357 U. S. 235, cited by appellant, is inapposite since there was not the "minimum contact" with the state assuming jurisdiction by the defendants over whom jurisdiction was assumed.

For the foregoing reasons, it is respectfully submitted that the appeal filed herein should be dismissed and appellee, Housing Authority of the City of Camden so moves.

Respectfully submitted,

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